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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

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16 PHU LE,

17 Plaintiff,

18 vs.

19 NICHOLAS W. BELLENBAUM; AVIS, INC.  
20 dba AVIS RENT A CAR; AND DOES 1 TO  
21 20,

22 Defendants.

Case No.

**NOTICE OF SUBSTITUTION OF  
UNITED STATES OF AMERICA AS  
DEFENDANT**

Removed from Superior Court of California  
County of San Diego  
Case No. 37-2008-00085095-CU-PA-CTL

23 PLEASE TAKE NOTICE that the UNITED STATES OF AMERICA, through its attorneys,  
24 Karen P. Hewitt, United States Attorney, and Dianne M. Schweiner, Assistant United States Attorney,  
25 hereby notifies the Court that by operation of law, to wit, 28 U.S.C. § 2679(d), as amended by the  
26 Federal Employees Liability Reform and Tort Compensation Act of 1988 (Pub. Law 100-694), the  
27 UNITED STATES is substituted as a Defendant, in place of Nicholas W. Bellenbaum. This substitution  
28 is based upon the following:

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1           1.       Plaintiff has filed an action for personal injuries from a motor vehicle accident based on  
2 tort liability. Nicholas W. Bellenbaum was acting within the scope of his employment as a federal  
3 employee of the United States Department of the Navy at all times with respect to any events which may  
4 have given rise to Plaintiff's Complaint.

5           2.       The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671, et seq. as amended by Public  
6 Law 100-694, provides that a suit against the UNITED STATES under the Act shall be the exclusive  
7 remedy for persons with claims for personal injury or loss of property allegedly resulting from the  
8 negligent or wrongful actions of federal employees taken within the scope of their employment.  
9 28 U.S.C. § 2679(b)(1), as amended.

10          3.       The Federal Tort Claims Act, as amended, further provides that upon certification by the  
11 Attorney General that a federal employee was acting within the scope of his employment at the time of  
12 the incident out of which the claim arose, any civil action commenced upon such claim in a State Court  
13 shall be removed without bond to federal district court at any time before trial. Such action shall be  
14 deemed an action against the UNITED STATES under the provisions of the Federal Tort Claims Act  
15 (FTCA), and the UNITED STATES shall be substituted as the party defendant in the place of said  
16 employee. The certification of the Attorney General conclusively establishes scope of office or  
17 employment for purposes of removal. 28 U.S.C. § 2679(d)(2).

18          4.       In connection with the filing of a Notice of Removal of a Civil Action in the instant case,  
19 the Attorney General, by delegation, has filed herein a Certification, pursuant to 28 U.S.C. § 2679(d),  
20 as amended, that Nicholas W. Bellenbaum was acting within the scope of his employment as an  
21 employee of the UNITED STATES at the time of the incident out of which Plaintiff's claim arose.

22       WHEREFORE, this action is properly deemed an action under the Federal Tort Claims Act,  
23 solely against the UNITED STATES as a substituted Defendant in the place of Nicholas W. Bellenbaum.  
24 Pursuant to 28 U.S.C. § 2679(d)(1), Nicholas W. Bellenbaum is entitled to dismissal, with prejudice,  
25 since said suit is precluded as to him without regard as to when the acts or omissions complained of  
26 occurred.

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28       ///

1 As a part of this Notice of Substitution, the Court is respectfully referred to the proposed Order  
2 of Substitution, Amendment, and Dismissal submitted herewith.

3  
4 DATED: August 19, 2008

Respectfully submitted,

5 KAREN P. HEWITT  
6 United States Attorney

7 *Dianne M. Schweiner*  
8 DIANNE M. SCHWEINER  
9 Assistant U.S. Attorney